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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,137	04/14/2004	William S. Endres	34577	6369
7590 03/02/2006				
Hovey Williams LLP Suite 400 2405 Grand Blvd. Kansas City, MO 64108			EXAMINER LANDRUM, EDWARD F	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 03/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/824,137

Applicant(s)

ENDRES ET AL.

Examiner

Edward F. Landrum

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 8/13/2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Gregory (U.S Patent No. 1,421,458).

Gregory teaches a chopping device comprising a body (a) and a plurality of laterally spaced cutting blades (b) that extend horizontally for severing food. The body has a rounded top (see Figure 1) and the blades (b) are substantially parallel to one another. Furthermore, Gregory teaches the chopping device has a stripper plate (b1) for stripping food off of the blades.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3, and 5-10 rejected under 35 U.S.C. 103(a) as being unpatentable over Gregory in view of Lincoln (U.S Patent No. 230,294).

Gregory teaches all of the elements of the current invention as stated above except the stripping device being selectively shiftable downwards by a spring biased button located in the center of the top which has a circular periphery.

Lincoln teaches (Pg. 1, lines 13-68; also see Figures 1&2) a cutting mechanism with a spring biased ejector mechanism. When a button (g) is depressed an ejector plate (c) downwards to eject what has been cut. When pressure on the button (g) has been removed a spring (d) forces the ejector plate (c) back into the mechanism.

It would have been obvious to have modified Gregory to incorporate the teachings of Lincoln to create a stripper plate that was selectively useable. Doing so would prevent foods being chopped from potentially becoming bruised or damaged by the impact of the stripper plate against the surface of the food.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gregory in view of Smolk (U.S Patent No. 1,495,211).

Gregory teaches all of the elements of the current invention as stated above except for the cutting edges being convexly shaped.

Smolk teaches (see Figure 1) the cutting edges of a chopping element being convexly curved for the purpose of chopping elements located in a curved receptacle (lines 13-17).

It would have been obvious to have modified Gregory to incorporate the teachings of Smolk to make the cutting edges convexly curved to allow a user to chop elements located in a curved receptacle such as a bowl without having the blades cut into the sides of the bowl and either dull the blades or break the bowl.

7. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gregory in view of Stuchlik (U.S. Patent No. 6,619,487).

Gregory teaches all of the elements of the current invention as stated above except for a cover which can be secured to the body of the cover to cover the blades.

Stuchlik teaches (see Figure 6) a covering unit for the blades of cutlery components. The cutlery component locks in place by locking the handle to the covering unit (Col. 3, lines 36-42). Furthermore, the blade is suspended in the covering unit to prevent dulling (Col 3, lines 20-27).

It would have been obvious to have modified Gregory to incorporate the teachings of Stuchlik to provide a locking cover for the blades of the cutting apparatus. A locking cover would help prevent small children from removing the cutting apparatus and possibly injuring him or herself and also prevent the blades from dulling as quickly by keeping the blades off of the ground.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Sweeney (U.S Patent No. 1,672,045), Craig (U.S Patent No. 965,991), Frank (U.S Patent No. 2,379,140), and Little (U.S Patent No. 2,140,160) teach cutting devices with stripper mechanisms.


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward F. Landrum whose telephone number is 571-272-5567. The examiner can normally be reached on Monday-Friday 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 571-272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EFL  
2/23/2006



  
Allan N. Shoap  
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